



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG-2013-0026]

RIN 1625-AA00

Safety Zones; Swim Events in the Captain of the Port New York Zone; Hudson River, East River, Upper New York Bay, Lower New York Bay; New York, NY.

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish five temporary safety zones for swim events within the Captain of the Port (COTP) New York Zone. These proposed zones will be established on the navigable waters of the Hudson River, East River, Upper New York Bay, and Lower New York Bay. These temporary safety zones are necessary to protect the maritime public and event participants from the hazards associated with these events. Persons and vessels are prohibited from entering into, transiting through, mooring, or anchoring within the safety zones unless authorized by the COTP New York or the designated representative.

DATES: Comments and related material must be received by the

Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail or Delivery: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for further instructions on submitting comments. To avoid duplication, please use only one of these three methods. FOR FURTHER

INFORMATION CONTACT: If you have questions on this rule, call or e-mail Lieutenant Junior Grade Kristopher Kesting, Coast Guard; telephone (718)354-4154, e-mail

Kristopher.R.Kesting@uscg.mil. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online at <http://www.regulations.gov>, or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we

can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0026) in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG-2013-0026) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public meeting

We do not now plan to hold a public meeting. But you may submit a request for one on or before [INSERT DATE 7 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER] using one of the methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

B. Regulatory History and Information

In previous years, the Coast Guard has established special local regulations, regulated areas, and safety zones on a case by case basis to ensure the protection of the maritime public and event participants from hazards associated with these events. The Coast Guard has not received public comments or concerns regarding the impact to waterway traffic from these events.

C. Basis and Purpose

The legal basis for the proposed rule is 33 U.S.C. 1266, 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Pub. L. 107-295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to define regulatory safety zones.

Marine events are frequently held on the navigable waters within the COTP Sector New York Zone. The COTP has determined that swimming events in close proximity to marine traffic pose significant risk to public safety and property. The combination of increased numbers of recreation vessels, congested waterways, and large numbers of swimmers in the water has the potential to result in serious injuries or fatalities. In order to protect the safety of all waterway users including event participants and spectators, this temporary rule establishes temporary safety zones for the duration of the events.

This rule prevents vessels from entering into, transiting through, and mooring or anchoring within the areas specifically designated as the regulated areas during the periods of enforcement unless authorized by the COTP, or the designated representative.

D. Discussion of Proposed Rule

This temporary rule creates safety zones for five swim

events on the navigable waters of the Hudson River, East River, Upper New York Bay and Lower New York Bay. A portion of the navigable waters will be closed during the effective periods to all vessel traffic except local, state or Coast Guard patrol crafts. The events and locations are as follows:

(1) Hudson Valley Triathlon: Waters of the Hudson River in the vicinity of Ulster Landing, NY.

(2) Coney Island to New Dorp Beach Swim: Waters of the Lower New York Bay spanning from Rockaway Point, Coney Island to New Dorp Beach, Staten Island.

(3) Brooklyn Bridge Swim: Waters of the East River in the vicinity of Brooklyn Bridge Park, Brooklyn, NY and East River Park, New York, NY.

(4) The Liberty to Freedom Swim: Waters of the Upper New York Bay, from Liberty Island, NJ to North Cove, New York, NY.

(5) Ederle Swim: Waters of the Hudson River between North Cove Marina, New York, NY and Sandy Hook, NJ.

The proposed regulation would prevent vessels from transiting in close proximity to swimmers in areas designated as safety zones during the periods of enforcement to ensure protection of the maritime public and event participants from hazards associated with the listed swim events.

Event sponsors, designated participants, and official patrol vessels will be allowed to enter the regulated areas.

Spectators and other vessels not registered as event participants will not be permitted to enter the safety zones without permission of the COTP or the designated representative. Marine traffic will be permitted to pass through safety zones at a safe distance from event participants with permission of the COTP or the designated representative.

E. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

These safety zones will be of limited duration, and vessels may transit in portions of the affected waterway. Furthermore, vessels may be authorized to transit these zones with the permission of the COTP New York or the designated

representative.

Notifications will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events. No new or additional restrictions would be imposed on vessel traffic.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit, fish or anchor in the designated safety zones during the enforcement period of the swim events.

The safety zones will not have significant economic impact on a substantial number of small entities for the following reasons: vessels will only be restricted from safety zone areas for a short duration of time; vessels may transit in portions of the affected waterway at a safe distance from event participants with permission of the COTP or the designated representative; the Coast Guard has promulgated safety zones in accordance with 33 CFR Part 165 for all event areas in the past and has not received notice of any negative impact caused by any of the

safety zones; and notifications will be made to the local maritime community through the Local Notice to Mariners and Broadcast Notice to Mariners well in advance of the events.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State,

local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This proposed rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial

direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves the establishment of five temporary safety zones for swim events. This proposed rule may be categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant

Instruction. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1, which authorizes the Coast Guard to define Safety Zone Regulations.

2. Add §165.T01-0026 to read as follows:

§165.T01-0026 Swim Events in the Captain of the Port New York Zone, Hudson River, East River, Upper New York Bay, Lower New York Bay, New York, NY.

(a) Regulation. The general regulations contained in 33 CFR 165.23 as well as the following regulations apply to the swim events listed in the **TABLE to 165.T01-0026**. These regulations will be enforced for the duration of each swim

event. Notifications of exact dates and times of the enforcement period will be made to the local maritime community in the final rule. First Coast Guard District Local Notice to Mariners can be found at <http://www.navcen.uscg.gov/>.

(b) Definitions. The following definitions apply to this section:

(1) Designated Representative. A designated representative is any Coast Guard commissioned, warrant or petty officer of the U.S. Coast Guard who has been designated by the Captain of the Port (COTP) New York Zone to act on his or her behalf.

(2) Official Patrol Vessels. Official patrol vessels may consist of any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessels assigned or approved by the COTP. The designated representative may be on an official patrol vessel or may be on shore and will communicate with vessels via VHF-FM radio or loudhailer. In addition, members of the Coast Guard Auxiliary may be present to inform vessel operators of this regulation.

(3) Spectators. All persons and vessels not registered with the event sponsor as participants or official patrol vessels.

(c) Vessel operators desiring to enter or operate within the regulated areas shall contact the COTP or the designated representative via VHF channel 16 or 718-354-4353 (Sector New York command center) to obtain permission to do so.

(d) Spectators or other vessels shall not anchor, block, loiter within, or impede the transit of event participants or official patrol vessels in the regulated areas during the effective dates and times, or dates and times as modified through the Local Notice to Mariners, unless authorized by COTP or the designated representative.

(e) Upon being hailed by a U.S. Coast Guard vessel or the designated representative, by siren, radio, flashing light or other means, the operator of the vessel shall proceed as directed. Failure to comply with a lawful direction may result in expulsion from the area, citation for failure to comply, or both.

(f) The COTP or the designated representative may delay or terminate any marine event in this subpart at any time it is deemed necessary to ensure the safety of life or property.

(g) For all swim events listed in the TABLE to §165.T01-0026, vessels not associated with the event that are permitted to enter the regulated areas in accordance with section (c), shall maintain a separation of at least 100 yards from the participants.

TABLE 1 TO §165.T01-0026

1	Hudson River
1.1 Hudson Valley Triathlon	<ul style="list-style-type: none">• Date: July 14, 2013• Location site: All waters of the Hudson River in the vicinity of Ulster Landing, bound by the following points: 42°00'03.7"N, 073°56'43.1"W; thence to 41°59'52.5"N, 073°56'34.2"W; thence to 42°00'15.1"N, 073°56'25.2"W; thence to 42°00'05.4"N, 073°56'41.9"W; thence along the shoreline to the point of origin.
2	Lower New York Bay
2.1 Coney Island to New Dorp Beach Swim	<ul style="list-style-type: none">• Date: October 14, and 27, 2013• Location: All waters of the Lower New York Bay spanning from Rockaway Point, Coney Island to New Dorp Beach, Staten Island, bound by the following points: 40°32'33.69"N, 073°56'25.32"W; thence to 40°26'50.97"N, 073°59'01.05"W; thence to 40°28'52.26"N, 074°0'21.97"W; thence to 40°34'13.48"N, 074°0'07.18"W; thence back to the point of origin.
3	East River, Upper New York Bay, Lower New York Bay
3.1 Brooklyn Bridge Swim	<ul style="list-style-type: none">• Date: July 07, 2013.• Rain Date: NA• Location: All waters of the East River, bound by the following points: 40°42'17.04"N, 073°59'21.87"W; thence to 40°42'12.03"N, 073°59'46.17"W; thence to 40°42'24.48"N, 074°0'4.09"W; thence to 40°42'34.19N, 073°59'31.41"W; thence back to point of origin.
4	Upper New York Bay, Hudson River

**4.1 Liberty to
Freedom Swim**

- Date: September 08, 2013
- Location: All waters of the East River, bound by the following points:
40°42'17.04"N, 073°59'21.87"W; thence to
40°42'12.03"N, 073°59'46.17"W; thence to
40°42'24.48"N, 074°0'4.09"W; thence to
40°42'34.19N, 073°59'31.41"W; thence back
to point of origin.

5

Upper New York Bay, Hudson River

[Reserved]

6

Upper New York Bay, Lower New York Bay

6.1 Ederle Swim

- Date: August 18, 19 and 22, 2013.
 - Location: All waters of the Hudson River, Upper and Lower New York Bays, bound by the following points: 40°42'48.13"N, 074°0'58.74"W; thence to 40°42'3.20"N, 073°59'54.84"W; thence to 40°36'32.70"N, 074°2'10.73"W; thence to 40°28'4.43N, 073°59'38.14"W; thence to 40°28'41.58"N, 074°0'55.27"W; thence to 40°38'38.77"N, 074°4'15.05"W; thence to 40°43'0.31"N, 074°1'48.11"W thence back to point of origin.
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Dated: March 2, 2013

G. Loeb1,
Captain, U.S. Coast Guard
Captain of the Port New York

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